AMENDMENT 2
Why should 96 words cause such a stir??

When a law is passed that challenges our nation's fundamental principles, out system of government is tested. At its roots, the debate over Amendment 2 is one that has defined our national character since 1776. How does a democratic system of government respond to the will of the majority while safeguarding the rights of them minority?

For most Americans, enjoying civil liberties is as natural and as unsolicited as breathing: speaking your mind, associating with friends, and worshipping as you choose are some of the political privileges we often take for granted. But when your views are unpopular, your friends despised, or your religion misunderstood, the laws allowing you to exercise these civil rights suddenly become more important. Amendment 2 is one example of when the democratically expressed "will of the people" collides with the checks and balances of our constitutional system--a system in which the civil rights of any citizen cannot easily be restricted or taken away, even by a majority of voters.

CIVIL RIGHTS/CIVIL WRONGS
The Importance Of Civil Liberties

Intro

Not all Americans enjoy the freedoms of our nation. At one time "all men are created equal" did not include African-Americans and women. Slavery was legal in colonial America and the U.S. Constitution specifically denied blacks their equality, citizenship, and rights. And women had to wait until 1920 before they gained the right to vote.

Despite these injustices, the founders of our country were concerned about human rights and civil liberties, so much so, that they delayed approving the U.S. Constitution until a Bill of Rights (the first ten amendments) was added. The Bill of Rights defines fundamental civil rights guaranteed to all citizens.

The American experience with slavery and decades of official racial segregation fueled the modern-day civil rights movement, which began in the late 1940s. This movement focused on eradicating racial discrimination and legal barriers preventing people of color from exercising their fundamental rights. The 1964 and 1968 Civil Rights Acts are major achievements of the civil rights movement.

The desire for freedom and equality is alive in other movements working to remove discriminatory barriers: The women's rights movement of the 1970s (which added "sex" to the 1964 Civil Rights Act); the disability rights movement of the 1980s (which produced the 1991 Americans with Disabilities Act); and the current lesbian and gay rights movement.

WHAT ARE CIVIL RIGHTS?

Civil Rights are fundamental rights guaranteed by the Constitution of the United States, state constitutions, and other laws. The U.S. Constitution is the supreme law of the land and its civil rights protections cannot be violated without a legitimate reason. It is unconstitutional for any state to pass laws interfering with the exercise of these rights.

WHAT IS DISCRIMINATION?

The American principle of "life, liberty, and the pursuit of happiness" holds that people should have an equal opportunity to live, compete, and succeed based on their individual abilities, without being held back by irrelevant personal traits. For many reasons, our society has yet to completely live up to that ideal. Civil rights laws protect citizens against unfair and unequal treatment in the basic necessities of life (employment, housing, and public accommodations) when that treatment is based solely on irrelevant traits. Some protected characteristics, like race and gender, are immutable (incapable of being changed). Others, like religion and political affiliation, are chosen and can be changed.

WHAT CATEGORIES ARE PROTECTED BY ANTI-DISCRIMINATION LAWS?

Federal civil rights laws identify seven categories that are protected nationally from discrimination: race, sex, national origin, religion, age, disability, and veteran's status. The 1964 Civil Rights Act prohibits discrimination in employment and public accommodations (lodging, restaurants, medical facilities, and other public services). The 1968 Civil Rights Act extends these guarantees to housing and real estate.

IF FEDERAL LAW PROHIBITS DISCRIMINATION, WHY ARE STATE AND LOCAL ORDINANCES NEEDED:

While similar to federal civil rights laws, state and local anti-discrimination ordinances often include other categories not protected at the national level (marital status, political affiliation, and sexual orientation, for example) to address the needs of their communities. Many of the categories protected by federal laws were first protected by cities, states, and other government agencies.

DO ANTI-DISCRIMINATION LAWS PROTECT ONLY PEOPLE OF COLOR?

NO. Anti-discrimination protections are for *all* citizens. Because racial minorities have been the main targets of discrimination does not mean that civil rights protections are for people of color only. The category of "race" protects whites as well as people of color, just as the category of "sexual orientation" protects heterosexuals as well as homosexuals.

ARE CIVIL RIGHTS PROTECTIONS ONLY FOR PEOPLE WHO ARE ECONOMICALLY DISADVANTAGED?

NO. Civil rights protections are *not* based on economic status and do not stop once someone reaches a certain income level. Being denied a job, an apartment, or public services because of your sex, race, religion, age, or other irrelevant traits can happen to your whether you are rich or poor.

WHAT IS AFFIRMATIVE ACTION?

Affirmative action programs aim to provide increased employment opportunities for women and people of color in order to overcome past patterns of discrimination. Affirmative action is a temporary remedy, *not a right.* **There have *never* been affirmative action programs for sexual orientation or for any protected categories other than gender and race.**

DON'T ANTI-DISCRIMINATION LAWS AUTOMATICALLY LEAD TO QUOTAS?

No. Hiring quotas were declared unconstitutional in 1978 by the United States Supreme Court.

DO ANTI-DISCRIMINATION LAWS RESTRICT AN EMPLOYER';S ABILITY TO MANAGE THEIR EMPLOYEES?

No. An employer has every right to dismiss an employee who is not doing his or her job.

AMENDMENT 2:
The Basics

On November 3, 1992, Colorado voters approved, by 53.6 percent to 46.4 percent, a ballot initiative known as "Amendment 2." The initiative amended the Constitution of the State of Colorado by adding a new section - 30(b) - to Article II (the state's Bill of Rights). The wording of the amendment reads:

NO PROTECTED STATUS BASED ON HOMOSEXUAL, LESBIAN OR BISEXUAL ORIENTATION. Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities, or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices ore relationships shall constitute or otherwise be the basis of, or entitle any persons or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be in all respects self-executing.

WHAT DOES AMENDMENT 2 DO?

Amendment 2 specifically excludes lesbians, bisexuals, and gay men from existing state and local laws prohibiting discrimination in employment, housing, and public accommodations based on sexual orientation. Amendment 2 forbids all state and local government from taking action to remedy discrimination against lesbians, bisexuals, and gay men.

WHAT STATE AND LOCAL LAWS ARE INVALIDATED BY AMENDMENT 2?

The cities of Aspen, Boulder, Crested Butte, Denver, and Telluride have ordinances prohibiting discrimination in employment, housing, and public accommodations based on sexual orientation. A governor's executive order protects employees in state government. A legislative statute prohibits sexual orientation discrimination in health insurance coverage. And three state universities and one school district include sexual orientation in their anti-discrimination policies. Under Amendment 2, all of these laws and policies will be invalid for anyone who isn't heterosexual.

WHAT IS SEXUAL ORIENTATION?

Everyone has a sexual orientation; it's basic to human sexuality. Generally, psychologist define sexual orientation as one or more of the following:

* a physical attraction to and desire to share sexual intimacy with partners of a particular gender
* an emotional attraction to and desire to share emotional intimacy with partners of a particular gender
* personally identifying oneself as a heterosexual, lesbian, bisexual, or gay
* establishing a public identity based on your sexual orientation
* identifying with a community defined by its sexual orientation.

WHAT DOES "MINORITY STATUS" MEAN?

"Minority status" is a term with no clear legal meaning. Supporters of Amendment 2 use it to suggest that civil rights laws give privileges to minority groups. This is not true.

WHAT IS A "PROTECTED STATUS"?

"Protected status" is a legal term given to a group that has been the target of a pattern of discrimination. Race, gender, and religion are three examples of protected status's. Supporters of Amendment 2 use "protected status" to suggest that lesbians, bisexuals, and gay men would receive benefits denied to others. This is not true.

WHAT ARE "QUOTA PREFERENCES:?

Under very specific and strict legal circumstances, numerical guidelines may be set to correct a pattern of under-representation of a certain group at a particular work place (such as the number of women on a police force). Quota preferences have *only* been used for the protected categories of race, gender, and age - never for sexual orientation.

WHAT IS A "CLAIM OF DISCRIMINATION"?

A claim of discrimination is a legal action in which a person claims to have suffered unfair and unequal treatment because of his or her membership in a protected class or group. Amendment 2 prohibits all branches of Colorado government (including its courts) from responding to claims of discrimination by lesbians, bisexuals, or gay men.

HAVE HOMOSEXUALS REALLY BEEN DISCRIMINATED AGAINST BECAUSE OF THEIR SEXUAL ORIENTATION?

Yes. Lesbians, bisexuals, and gay men (as well as heterosexuals who are perceived to be homosexual or bisexual) face job discrimination, on-the-job harassment, denial of housing, and lack of access to public accommodations solely because of their sexual orientation. Many try to avoid discrimination (as well as harassment, intimidation, and assault) by hiding their sexual orientation (remaining "in the closet) or pretending to be straight). Because Amendment 2 removes legal remedies for lesbians, bisexuals, and gay men, Amendment 2 permits open discrimination against them.

BUT DON'T HOMOSEXUALS ALREADY HAVE THE SAME RIGHTS AS EVERYBODY ELSE?

No. If they did, anti-discrimination laws wouldn't be needed. Amendment 2 creates *unequal* rights by leaving existing protections for *heterosexuals* while specifically removing them for lesbians, bisexuals, and gay men.

WHAT IS MEANT BY "SPECIAL RIGHTS"?

The phrase "special rights" is used by supporters of Amendment 2 to imply that anti-discrimination laws give minorities additional rights over and above those of the majority. This is not true. Anti-discrimination laws guarantee fair and equal treatment for all citizens. "Special rights" does *not* appear in Amendment 2 and has no agreed upon legal meaning. **There is nothing "special" about *equal* rights.**

ARE HOMOSEXUALS ASKING FOR SPECIAL TREATMENT?

No. Lesbians, bisexuals, and gay men want to be treated *equally*. Anti-discrimination laws protecting sexual orientation state that *no one* (whether they are heterosexual, bisexual, or homosexual) should lose his or her job, be evicted from an apartment, or be refused public accommodations because of their sexual orientation. **That's *equal*, not special treatment.**

OUR CONSTITUTIONAL SAFEGUARD:
A Separation of Power

Who rules? Is the "will of the people" the final say in our democracy? If the power to govern ourselves rests with "We the People," then why all the fuss over Amendment 2?

In a pure democracy, the majority rules all the time. Our nation, however, is a constitutional democracy. The basic freedoms and structure of our government are found in the U.S. Constitution which places limits on what the majority (and their representatives) can and cannot do.

The Constitution separates power into three governmental branches - executive, legislative, and judicial - that monitor and control each other. This system of "checks and balances" keeps each branch from abusing its power. The legislative branch creates laws. The executive branch sets policy and administers laws. The judicial branch makes sure that the legislative and executive branches act within the guidelines of the Constitution.

Citizen ballot initiatives are part of the legislative branch because they are a right granted to the voters by the state legislature. Laws passed by citizen initiative can be reviewed by the judicial branch to see that they are in agreement with the state and federal constitutions. If they are not, the courts have the power to rule them unconstitutional and prevent them from being enforced.

"My idea of sovereignty," wrote James Madison (the author of the Bill of Rights), "is that the people can change the [U.S.] Constitution if they please; but while the Constitution exists, they must conform to its dictates." **Any changes to a state constitution cannot violate the U.S. Constitution.**

WHY ARE THE COURTS INVOLVED WITH AMENDMENT? AREN'T THEY MEDDLING WITH THE WILL OF THE PEOPLE?

The courts do not act on their own; it takes a claim of harm or damage by a citizen for the courts to become involved. The lawsuit against Amendment 2 was filed by a group of individuals fearing personal harm if Amendment 2 is enforced. Their claims are based on the fundamental rights guaranteed by the U.S. Constitution. The courts are empowered to determine whether Amendment 2 violates and fundamental constitutional rights.

WHAT ARE "FUNDAMENTAL RIGHTS"?

Fundamental rights are defined by the U.S. Constitution and take precedence over all other laws. The United Statues Supreme Court is the final interpreter of the Constitution's fundamental rights. Fundamental rights are cornerstones of our democracy and cannot be overruled by majority vote.

WHO IS CHALLENGING AMENDMENT 2?

The plaintiffs challenging the constitutionality of Amendment 2 are nine Colorado citizens, the home rule cities of Aspen, Boulder, and Denver, and the Boulder Valley School District. The citizens include a Denver police officer, an ordained minister, a professional tennis player, and various city and state employees.

WHO IS DEFENDING AMENDMENT 2?

The State of Colorado. As elected representatives, Governor Roy Romer and State Attorney General Gale Norton are listed as defendants.

DOES AMENDMENT 2 VIOLATE ANY FUNDAMENTAL RIGHTS?

That is for a court of law to decide. According to the plaintiffs, Amendment 2 may violate the right of due process and equal protection under the law as guaranteed by the Fourteenth Amendment to the U.S. Constitution. It may also violate freedom of association and expression, the right to petition the government, and the separation of church and state as guaranteed by the First Amendment.

HOW MIGHT AMENDMENT 2 DEPRIVE HOMOSEXUALS OF EQUAL PROTECTION UNDER LAW?

Amendment 2 prevents all branches of Colorado government from passing and enforcing laws protecting lesbians, bisexuals, and gay men from discrimination. Laws prohibiting discrimination based on sexual orientation still exist (like those in Boulder, Denver, and Aspen), but apply only to heterosexuals. Amendment 2 also prohibits the Colorado judicial system from hearing all claims of discrimination based on sexual orientation brought by lesbians, bisexuals, and gay men (this may violate the constitutional separation of powers). No other group of citizens is prevented from accessing its government in the same way.

HOW MIGHT AMENDMENT 2 VIOLATE THE RIGHT TO FREEDOM OF ASSOCIATION AND EXPRESSION?

Under Amendment 2, discrimination would be legal against people who are, or who are perceived to be, lesbian, bisexual, or gay. Fear of discrimination may discourage people from associating with homosexuals or working for the equal rights of homosexuals.

HOW MIGHT AMENDMENT 2 VIOLATE THE RIGHT TO PETITION?

The right to ask (petition) the government to consider and address your complaints is guaranteed by the First Amendment to the U.S. Constitution. Under Amendment 2, no Colorado court of branch of government can assist anyone who brings a claim of discrimination based on lesbian, bisexual, or gay sexual orientation.

HOW MIGHT AMENDMENT 2 VIOLATE THE SEPARATION OF CHURCH AND STATE?

The First Amendment's "establishment clause" prohibits the government from establishing, promoting, or favoring any particular religion over another. While the wording of Amendment 2 is careful not to refer to a religious doctrine, many of its sponsors often justify the need for it by using religious arguments against homosexuality. In this way, Amendment 2 may be interpreted as promoting a religious agenda.

HOW CAN AMENDMENT 2 BE UNCONSTITUTIONAL IF A MAJORITY VOTED FOR IT?

Even laws supported by a majority of the voters can be unjust. For example, if Colorado voters approved citizen initiatives establishing slavery, or denying women the right to vote, those laws would be unconstitutional, no matter how many people voted for them.

WHAT IS A PRELIMINARY INJUNCTION?

A preliminary injunction is a court order forbidding something from taking place. It is granted only when a court finds it necessary to prevent irreversible harm to individuals or property. A preliminary injunction remains in force until the issue has been settled by the court.

WHY WAS AN INJUNCTION AGAINST AMENDMENT 2 GRANTED?

On January 15, 1993, Denver District Court Judge Jeffrey Bayless ruled that the plaintiffs would most likely be able to prove beyond a reasonable doubt that Amendment 2 deprives them of specific fundamental rights. Judge Bayless determined that the threat of anyone having their fundamental rights violated for any period of time was enough to put the enforcement of Amendment 2 on hold. He also ruled that because Amendment 2 may violate the U.S. Constitution, the state of Colorado must defend the amendment according to a standard of strict scrutiny.

WHAT IS "STRICT SCRUTINY"?

Strict scrutiny requires the state to prove that Amendment 2 serves a compelling (significant) governmental interest. Judge Bayless found that Amendment 2 gives power to private biases and, while the state may not be able to control private prejudices, it also could not encourage them. The law is constantly changing to meet evolving standards of decency, said Judge Bayless, and the views of today's majority may not reflect the views of tomorrow's (Boulder is an example of this - see time line, items A, B, and D). The court ruled that the state must show a compelling government interest in order to justify the unequal treatment created by Amendment 2.

WHAT DID THE COLORADO SUPREME COURT DECIDE?

The state asked the Colorado Supreme Court to overrule Judge Bayless and allow Amendment 2 to be enforced. The Supreme Court ruled that the "equal protection clause" of the Fourteenth Amendment prevents states from making it more difficult for any particular group to seek laws that benefit them. By preventing Colorado's courts and government from dealing with sexual orientation discrimination, Amendment 2 improperly "fences out" a specific group of citizens from full and equal participation in the political process. Once again, the state must show a compelling reason for Amendment 2's unequal treatment. By a vote of 6 to 1, the Colorado Supreme Court agreed with Judge Bayless that fundamental rights were in danger and left the injunction in place.

BUT DOESN'T PREVENTING AMENDMENT 2 FROM TAKING EFFECT UNDERMINE MAJORITY RULE?

On the contrary, the court reaffirmed our basic principles of democracy - majority rule, minority rights, and political debate. Although approved by a majority of state voters, Amendment 2 short-circuits our political process by making it illegal to pass laws protecting lesbians, bisexuals, and gay men from discrimination. Shutting an unpopular minority out of the political system, even if done by majority vote, is unconstitutional, according to the Colorado Supreme Court.

BUT AMENDMENT WAS DEMOCRATICALLY VOTED UPON. WHY BOTHER TO VOTE IF MY VOTE WON'T COUNT?

Yet Amendment 2 makes the votes of lesbians, bisexuals, and gay men not count. Amendment 2 was passed with the clear purpose of making it more difficult for lesbians, bisexuals, and gay men to achieve legal relief from discrimination. With the exception of a state-wide vote to repeal Amendment 2, lesbians, bisexuals, and gay men are told that "you can appeal to your local government of issues of concern to you, but you will, by virtue of Amendment 2, lose." No other group is similarly treated.

IF AMENDMENT 2 MIGHT BE UNCONSTITUTIONAL, HOW DID IT GET ON THE BALLOT IN THE FIRST PLACE?

Under the Colorado Constitution, citizens are allowed to create or change laws via ballot initiatives. Colorado courts respect this right and generally do not interfere with the initiative process, even if a proposal might be unconstitutional.

WHO SPONSORED AMENDMENT 2?

Colorado for Family Values (CFV), which is based in Colorado Springs. CFV says that it is a grassroots organization, yet several members of CFV's board of directors are connected to several national organizations promoting fundamentalist Christianity, such as the Christian Coalition, Focus on the Family, the Traditional Values Coalition, Promise Keepers, Summit Ministries, and the Eagle Forum.

IF AMENDMENT 2 IS FOUND TO BE UNCONSTITUTIONAL, WILL HOMOSEXUALS BE PROTECTED AGAINST DISCRIMINATION THROUGHOUT COLORADO?

No. Colorado does not have a state-wide law protecting sexual orientation from discrimination.

IF AMENDMENT 2 IS CONSTITUTIONAL, WILL LESBIANS, BISEXUALS, AND GAY MEN HAVE ANY RECOURSE IF FIRED, EVICTED, OR DENIED PUBLIC ACCOMMODATIONS DUE TO THEIR SEXUAL ORIENTATION?

No, not within the state of Colorado.